

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 550 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?
YES
2. To be referred to the Reporter or not?
no

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3. Whether Their Lordships wish to see the fair copy
of the judgement?
no
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

no

5. Whether it is to be circulated to the Civil Judge?

no

RAJAN PARSHURAM PRIYADARSHEE

Versus

STATE OF GUJARAT

Appearance:

MR MR ANAND for Petitioners

MR MA BUKHARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/03/97

ORAL JUDGEMENT

1. By way of this Criminal Misc. Application u/s 482 of the Code of Criminal Procedure, the petitioners seek direction to quash the process issued by the learned Metropolitan Magistrate in criminal case No. 2322 of 1988 (Inquiry Case No.22 of 1987) pending in the Court of the learned Metropolitan Magistrate, Court No.3, Ahmedabad.

2. It appears that, on 1/2/87, a procession was taken out by the Bharatiya Janata Party supporters to celebrate the victory of their candidates in the Municipal elections from Saijpur area. The procession reached the area of Indrajeet colony at about 1.15 p.m. In the said colony, large number of Congress supporters including the complainant respondent No.2 were present. They were very much agitated and indulged in stone throwing. When the police tried to prevent them from doing so, they started throwing stones at the policemen. In view of this, the petitioner No.2 - Ramchandra Jaynarayan Yadav, P.I. was left with no option but to order that teargas shells may be used to disperse the crowd. The petitioner No.1 - Rajan Parshuram Priyadarshee, I.P.S., who was the Deputy Commissioner of Police, North Division and the Superintendent of Police, CH Division also arrived on the spot. In spite of warnings to disperse the crowd led by respondent No.2 continued its unlawful and dangerous activity of throwing stones on the police force and the people coming in the procession and therefore, the policemen were compelled to resort to lathi charge. Many police officers and police constables received injuries. The police therefore arrested as many as 49 people on the spot and seven more

later on for rioting and other related offences. The police registered a case for offence u/s 143, 147, 148, 149, 332, 337, 427, 353, 186 r/w section 34 of the IPC.

3. On 25/02/1987, the respondent No.2 lodged a private complaint before the learned Metropolitan Magistrate, Court No.3, Ahmedabad, alleging that the police force which included the petitioners, assaulted the complainant and others. It is also stated that they were beaten as they had lodged the complaint against the police officers for not taking the action against the bootleggers of that area. The learned Magistrate issued process against the petitioners for the said offences.

4. Mr M.R.Anand, Sr. Advocate appearing for the petitioners submits that, learned Magistrate has committed error in issuing process without sanction of the State Government u/s 132 as well as u/s 197 of the Code of Criminal Procedure. Advancing the contention, learned counsel submits that petitioners who are Police Officers not below the rank of Sub Inspector, have acted in discharge of their duty u/s 129 and hence, no prosecution can be instituted against them without the sanction of the State Government u/s 132 of the Code.

In order to appreciate the contention, it would be convenient to read section 129 and 132, thus -
Section-129 :

- (1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.
- (2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in

order to disperse such assembly or that they may be punished according to law.

Section-132 : Protection against prosecution for acts done under preceding sections :-

(1) No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court, except -

(a) with the sanction of the Central Government where such person is officer or member of the armed forces;

(b) with the sanction of the State Government in any other case.

(2) (a) No Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under section 129 or section 130.

(c) no officer of the armed forces acting under section 131 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey;

shall be deemed to have thereby committed an offence.

(3) In this section and in the preceding sections of this Chapter -

(a) the expression 'armed forces' means the military, naval and air forces, operating as land forces and includes any other Armed Forces of the Union so operating;

(b) 'officer' in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the

armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a noncommissioned officer and a non-gazetted officer;

- (c) 'member' in relation to the armed forces,
means a person in the armed forces other than an officer.

A reading of the section 129 shows that a Police Officer not below the rank of Sub Inspector can use force for dispersing an unlawful assembly, which is likely to cause a disturbance of public peace, and has not disperse inspite of the fact that it has been asked to do so. Using a force in such circumstance shall be an act done u/s 129, and such an act is protected u/s 132. Such a power is vested in Police Officer u/s 129 and protection is given u/s 132 in public interest. In the instant case, it is evident from the reading of complaint and the report of 1/2/1987 that the unlawful assembly had not dispersed inspite of the fact that they were asked to do so and as such, even if the complainants allegations are accepted on its face value, if the force was used, it was act done u/s 129 and as such, the protection in absence of sanction u/s 132 is barred. In my view, the learned Magistrate has committed manifest error in issuing the process in disregard to the provisions of section 132 of the Code of Criminal Procedure.

5. Apart from section 132, petitioners are also protected u/s 197 of the Code of Criminal Procedure. Learned counsel placed reliance on the decision reported in AIR 1986 SC 345 and 1981 GLR VOL. XXII 956. Using force for dispersing the unlawful assembly is definitely an act in discharge of official duty and as such, the provisions of section 197 Cr.P.C. are also attracted.

6. In view of the aforesaid, this Criminal Misc. Application is allowed. The criminal proceedings of Criminal Case No.2322 of 1988 (Inquiry Case No.22 of 1987) and Criminal Case No. 24 of 1987, pending in the

Court of learned Metropolitan Magistrate, Court No.3, Ahmedabad are quashed and set aside. Rule made absolute accordingly.

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